

SENATE, NO. 2346

AN ACT RELATIVE TO OCEANS

*Be it enacted by the Senate and House of Representatives in General Court assembled,
And by the authority of the same, as follows:*

1 SECTION 1. The general court finds and declares that:

2

3 (a) Coastal population growth and rapid advances in technology and commerce have led to a
4 significant increase in the demands on the commonwealth's ocean resources;

5

6 (b) Ocean resources management in the commonwealth has historically been focused on
7 particular resources or activities, and public decisions about whether to allow certain activities
8 in the commonwealth's ocean waters have occurred in a reactive and fragmented manner;

9

10 (c) The commonwealth's ocean management policy must be adjusted to account for evolving
11 needs and values, emerging technologies and evolving understanding and knowledge of ocean
12 ecosystems in order to meet the commonwealth's public trust responsibilities;

13

14 (d) The commonwealth recognizes that commercial and recreational fisheries are an
15 integral and historic part of our culture and contribute substantial economic benefits to our

16 citizens and that regulation and management of these fisheries shall be, exclusively, by the
17 Massachusetts division of marine fisheries and the relevant federal and interstate management
18 agencies and citizens;

19

20 (e) It shall be the policy of the commonwealth that stewardship of the commonwealth's ocean
21 waters shall be carried out through an ocean management plan that protects, maintains and
22 restores the abundance and diversity of native species and habitats and the health and
23 productivity of coastal and marine ecosystems in order to fulfill the ecological, economic,
24 educational, social, cultural, nutritional, recreational and other requirements of present and
25 future generations in a sustainable manner; and

26

27 (f) The Massachusetts ocean management task force has studied and made recommendations,
28 based upon a public participation process, for improved stewardship of the commonwealth's
29 ocean resources.

30

31 SECTION 2. Chapter 10 of the General Laws, as so appearing, is hereby amended by inserting
32 after section 35EE the following new section:-

33

34 Section 35FF. There shall be established and set up on the books of the commonwealth
35 a separate fund to be administered by the secretary, as trustee, in consultation with the
36 department of environmental protection, to be known as the Ocean Resources and Waterways
37 Trust Fund. There shall be credited to such fund: any applicable compensation or mitigation for
38 ocean development to be used for the purposes of ocean resource enhancement or restoration,

39 with compensation or mitigation for public navigational impacts to be dedicated to public
40 navigational improvements; any income derived from the investment of amounts credited to the
41 fund; and any appropriation grant explicitly made to the fund. The priority for use of funds
42 credited to the trust for compensation or mitigation for ocean development projects shall be the
43 restoration or enhancement of marine habitat and resources related to the impacts of any
44 specific project; provided, that any funds for the enhancement of fisheries resources shall be
45 directed to the Marine Fisheries Trust Fund to conduct the needed fisheries restoration and
46 management programs, and any other amounts credited to the fund shall be used, without
47 further appropriation, solely for the purposes of environmental enhancement, restoration and
48 coordination of ocean resources by the secretary pursuant to this section, including the cost of
49 employees or consultant services necessary to implement these requirements. Money remaining
50 in the fund at the end of each fiscal year shall not revert to the General Fund and shall be
51 available for expenditure in the following fiscal year.

52

53 SECTION 3. Said chapter 10 of the General Laws, as so appearing, is hereby amended by
54 inserting after section 35FF the following new section:-

55

56 Section 35GG. There shall be established and set up on the books of the commonwealth a
57 separate fund to be administered by the director of the division of marine fisheries, as trustee, to
58 be known as the Marine Fisheries Trust Fund. There shall be credited to such fund: any
59 applicable compensation or mitigation related to fisheries management to be used for the
60 purposes of preserving and enhancing the fishing industry; any income derived from the
61 investment of amounts credited to the fund; and any appropriation, grant explicitly made to the

62 fund. Funds credited to the trust for compensation or mitigation for ocean development projects
63 shall be expended without further appropriation for the restoration or enhancement of marine
64 fisheries. Money remaining in the fund at the end of each fiscal year shall not revert to the
65 General Fund and shall be available for expenditure in the following fiscal year.

66

67 SECTION 4. Section 4A of chapter 21A of the General Laws, as appearing in the 2006
68 Official Edition, is hereby amended by inserting after the word “benefits” in line 15 the words: -
69 of section 4C and.

70

71 SECTION 5. Said chapter 21A is hereby further amended by inserting after section 4B the
72 following section: -

73

74 Section 4C. (a) The ocean waters and ocean-based development of the commonwealth, within
75 the ocean management planning area described in this section, shall be under the oversight,
76 coordination and planning authority of the secretary of energy and environmental affairs, in
77 accordance with the public trust doctrine, as established by common law and codified in the
78 Colonial Ordinances of 1641-47 and subsequent relevant statutes and cases, and in regular
79 consultation with the members of the ocean management advisory commission and all other
80 relevant agencies, on behalf of the people of the commonwealth pursuant to the policy, planning
81 and coordination authority vested in the secretary by sections 1 through 6 of this chapter. Such
82 oversight, coordination and planning authority shall be exercised through the promulgation of
83 an ocean management plan, which shall be a document including maps, illustrations and other
84 media, setting forth, among other things, the commonwealth’s goals, policies and standards to

85 ensure effective state stewardship of the ocean waters held in trust for the benefit of the public.
86 This stewardship shall be carried out in accordance with sound management practices that: take
87 into account the existing natural, social, cultural, historic and economic characteristics of the
88 planning area; protect the public trust; value biodiversity and ecosystem health; protect special,
89 sensitive or unique estuarine and marine life and habitats; address climate change and sea-level
90 rise; respect the interdependence of ecosystems; coordinate uses that cross international, federal,
91 state and local jurisdictions; take into account the importance of the waters of the
92 commonwealth to the vast majority of its citizens who derive livelihoods and recreational
93 benefits from fishing in the ocean; foster sustainable uses that capitalize on economic
94 opportunity without significant detriment to the ecology or natural beauty of the ocean; preserve
95 and enhance public access; support the needed infrastructure for the economy and quality of
96 life for the citizens of the commonwealth; use the best available information and expertise;
97 encourage public participation in decision-making; and adapt to our evolving knowledge and
98 understanding of the ocean environment.

99 Nothing in this section shall be construed to alter the jurisdictional authority of the division of
100 marine fisheries.

101 Ocean-based development, for the purposes of this section, shall be the creation, development
102 or installation of permanent or temporary structures and the mining, removal or other
103 exploitation of marine resources not currently subject to chapter 130 which shall remain in full
104 force and effect.

105

106 (b) The geographic area subject to an ocean management plan shall include any waters and
107 associated submerged lands of the ocean, including the seabed and subsoil, lying between the

108 line designated as the "Nearshore Boundary of the Ocean Management Planning Area" depicted
109 on a plan dated January 31, 2006, prepared by the office of coastal zone management and kept
110 on file at the executive office of energy and environmental affairs, and the seaward boundary of
111 the commonwealth. An ocean management plan may also address activities in adjacent seaward
112 waters and, to the maximum extent consistent with federal law, shall apply to activities
113 occurring in adjacent federal waters that are functionally connected or otherwise related to the
114 management of resources within the ocean management planning area. An ocean management
115 plan may take into account the different regional characteristics of the commonwealth's waters.
116

117 (c)(1) There shall be an ocean management advisory commission to assist the secretary in the
118 development of an ocean management plan. This commission shall consist of 16 members: 2
119 members of the senate, 1 to be appointed by the president of the senate and 1 appointed by the
120 minority leader of the senate; 2 members of the house of representatives, 1 to be appointed by
121 the speaker of the house of representatives and 1 appointed by the minority leader of the house
122 of representatives; the directors of the office of coastal zone management and the division of
123 marine fisheries, or their designees; and the following representatives, to be appointed by the
124 governor: 1 representative of a commercial fishing organization; 1 representative of a
125 recreational fishing organization; 2 representatives of environmental organizations; 1
126 representative of a non-fishing ocean-dependent industry; 3 mayors or members of a city
127 council or board of selectmen of coastal municipalities; and 2 directors of regional planning
128 agencies. As the term of a member expires, his successor shall be appointed for term of 3 years,
129 except that, initially, 6 members shall be appointed for terms of 2 years and 3 members shall be
130 appointed for terms of 1 year. The governor may also fill any vacancy in an unexpired term.

131 The members of the ocean management commission shall be selected with due regard to coastal
132 geographic distribution.

133

134 The commission shall annually elect a chairman and clerk, shall keep accurate records of its
135 meeting and hearing and shall meet at least quarterly and at the call of the chairman. A quorum
136 to conduct business shall consist of 8 members. The commission shall hold public meetings
137 relative to matters within the jurisdiction of the ocean management plan and shall make
138 recommendations to the secretary for the proper management and development of the plan. The
139 secretary or his designee shall attend all meetings and hearings of the commission. The
140 secretary shall ensure that the ocean management plan is consistent with the recommendations
141 of the commission.

142

143 The Office of Coastal Zone Management and Division of Marine Fisheries shall provide
144 technical staff support to the commission.

145

146 (2) There shall be an ocean science advisory council to assist the secretary in developing a
147 baseline assessment, subject to clause (1) of the subsection (e), and any other scientific
148 information necessary for the development of an ocean management plan. This council shall
149 consist of 9 members, to be appointed by the secretary: 3 scientists from academic institutions,
150 at least 1 of which shall be from the School of Marine Science and Technology at the University
151 of Massachusetts at Dartmouth; 3 scientists from private nonprofit organizations, including 1
152 scientist designated by the Massachusetts Fishermen's Partnership; and 3 scientists from
153 government agencies with demonstrated technical training and experience in the fields of

154 marine ecology, geology, biology, ichthyology, mammalogy, oceanography or other related
155 ocean science disciplines, at least 1 of which shall be from the Division of Marine Fisheries.
156 The secretary shall serve as coordinator of the council. The council shall meet at such times as
157 the secretary shall set, but no less than once every 3 months to assist the secretary in compiling
158 any scientific information necessary for the development of an ocean management plan.

159
160 (d) Upon adoption of an ocean management plan, no structure, use or activities with the
161 exception of commercial and recreational fishing pursuant to chapter 130, that could
162 significantly alter the ocean resources of the geographic area established in accordance with this
163 section may occur, except as allowed in subsections (j) and (k), and only if that structure, use or
164 activity conforms to all applicable provisions of the ocean management plan. All offices and
165 departments of the executive office of energy and environmental affairs and all other agencies,
166 departments, divisions, units, commissions, boards and authorities of the commonwealth shall
167 enforce laws and regulations within their jurisdiction, conduct regulatory reviews, administer
168 programs, disburse funds, perform or supervise construction activities and otherwise conduct
169 their activities in a manner that ensures conformance with the applicable provisions of an ocean
170 management plan and this section.

171
172 (e) Development, implementation and enforcement of an ocean management plan as
173 coordinated by the secretary, in regular consultation with the ocean management advisory
174 commission, shall include, but not be limited to, the following elements:

175

176 (1) Setting a baseline assessment of the commonwealth's ocean resources and resource use, in
177 consultation with the ocean science advisory council, that incorporates the best available
178 engineering applications and scientific understanding of marine and ocean resources, including
179 the identification of special, sensitive or unique estuarine and marine life and habitats, through
180 research, mapping, monitoring, public and agency input and other relevant natural,
181 infrastructure, social, cultural, historic and economic planning information that will serve as the
182 basis for evaluating alternatives and choosing courses of action;

183
184 (2) Establishing an outreach and participation program which shall include: early and
185 continuing interaction with the public, the business sector, other interested groups and local,
186 state, regional and federal officials; an opportunity for notice of the contents, public comments
187 and public meetings at the local and regional levels, in consultation with the Massachusetts
188 association of regional planning agencies, on a proposed ocean management plan, as described
189 in subsection (g); and regular consultation with the ocean management advisory commission,
190 the ocean science advisory council, the department of environmental protection, the department
191 of conservation and recreation, the department of public utilities, the energy facilities siting
192 board, the executive offices of economic development and public safety, the highway
193 department, the division of energy resources, the port authorities, the department of agricultural
194 resources and other state and federal agencies having jurisdiction over resources or activities
195 within or affecting the ocean management planning area in order to achieve maximum feasible
196 compatibility with the plans, programs or projects for which such departments, divisions, boards
197 and other agencies are responsible. A summary of this participation program shall be included
198 in an ocean management plan;

199

200 (3) Identifying management measures, including but not limited to, setting performance
201 standards, mitigation requirements and use limitations, as may be applicable to specific
202 geographic areas, to be developed in a manner consistent with applicable state statutes and
203 regulations that control or otherwise affect development or other ocean use in the planning
204 area. These management measures shall be compatible, to the maximum extent feasible, with
205 all applicable plans, programs and projects for which the respective state agencies are
206 responsible. The division of marine fisheries, pursuant to chapter 130 and any other applicable
207 general or special law, shall have sole responsibility for developing and implementing any
208 fisheries management plans or fisheries regulations that are determined to be necessary by the
209 division based on the best available scientific information. Management of marine fisheries
210 shall comply with all applicable rules and regulations of the division of marine fisheries and
211 federal or interstate fishery management plans, issued pursuant to chapter 130 or any other
212 applicable general or special law, and shall be integrated, to the maximum extent practicable,
213 with an ocean management plan. The integration of fisheries management plans with an ocean
214 management plan shall be designed to enhance the ability of the division of marine fisheries to
215 fulfill its responsibilities and to avoid any alterations of the jurisdictional authority of the
216 division of marine fisheries. Management of waterfowl hunting shall comply with the rules and
217 regulations of the division of fisheries and wildlife, issued pursuant to chapter 131 or any other
218 general or special law, and shall be integrated, to the maximum extent practicable, with an
219 ocean management plan. Nothing contained in this section shall prohibit the transiting of
220 commercial fishing and recreational boats in Massachusetts ocean waters;

221

222 (4) Implementing a specific strategy to ensure effective application of the identified
223 management measures within the planning area in question. Implementation arrangements may
224 include, as appropriate, memoranda of understanding or other instruments of agreement to
225 ensure coordination between the secretary and other relevant state agencies;

226
227 (5) Establishing a time period during which an ocean management plan is to remain effective
228 and a proposed date, not to exceed 5 years from the date of plan adoption, on which re-
229 evaluation of the plan will commence for purposes of renewal and amendment. The re-
230 evaluation process shall include, but not be limited to, an opportunity for public comments,
231 informational meetings and public meetings, as described in subsection (g). An ocean
232 management plan shall remain in effect until a renewed or amended ocean management plan is
233 adopted; and

234
235 (6) Creating other such elements as may be considered appropriate by the secretary of energy
236 and environmental affairs to serve the purposes of this section.

237
238 (f) Within six months of the passage of this act, the commission, in consultation with regional
239 planning agencies, shall appoint working groups comprised of members of the general public,
240 the business sector, local, state, regional, and federal officials and other interested groups for
241 each of the following geographic areas to advise the commission on ocean protection and
242 management goals and objectives and strategies. The geographic areas include the coastal
243 region north of Boston that is not considered an Ocean Sanctuary; the North Shore Ocean
244 Sanctuary, Essex Ocean Sanctuary, Cape Cod Bay Ocean Sanctuary, and Cape Cod Ocean

245 Sanctuary, as described in the Ocean Sanctuaries Act (Section 13, Chapter 132A); as well as the
246 Buzzards Bay Ocean Sanctuary and Nantucket Sound Ocean Sanctuary. The Buzzards Bay
247 Ocean Sanctuary shall be comprised of all the waters of Buzzards Bay bordered by the mainland
248 of the commonwealth on the west, Cape Cod and the Elizabeth Islands on the east and the
249 Massachusetts and Rhode Island ocean boundary on the south. The Nantucket Sound Ocean
250 Sanctuary shall be comprised of all the state waters of Nantucket Sound and Vineyard Sound,
251 bordered on the west by the Elizabeth Islands, on the North by Cape Cod, on the east by
252 Monomoy Island, and on the south by Nantucket Island and Martha's Vineyard Island.

253

254 (g) The secretary shall give notice of, and provide interested parties with the opportunity to
255 present data, views or arguments for a period of at least 60 days in regard to, a proposed ocean
256 management plan or any proposed amendment thereto or renewal thereof in writing, in
257 accordance with section 3 of chapter 30A, and shall make such proposed amendments or plans
258 available for a public review and comment period through notice in the Environmental Monitor
259 and at least 1 newspaper of general circulation in each of the 5 administrative regions defined in
260 the Massachusetts coastal zone management plan, commonly known as the North Shore, South
261 Shore, South Coast, metropolitan Boston and Cape Cod and the Islands regions. For a proposed
262 ocean management plan, the secretary shall conduct at least 1 public meeting, in consultation
263 with the Massachusetts association of regional planning agencies, in each of the 5
264 administrative regions defined in the Massachusetts coastal zone management plan. For a
265 proposed amendment to an ocean management plan, the secretary shall conduct at least 1 public
266 meeting, in consultation with the Massachusetts association of regional planning agencies, in
267 each of the administrative regions that would be directly affected by the proposed amendment.

268 At the conclusion of such public process, and after consideration of public comments received
269 during the public comment period, the secretary may adopt an ocean management plan or any
270 amendments thereto, and notice thereof shall be published in the next available edition of the
271 Environmental Monitor and the Massachusetts Register. The secretary shall file a copy of the
272 ocean management plan or any amendments thereto with the clerks of the house of
273 representatives and the senate, the house and senate committees on ways and means and the
274 joint committee on the environment, natural resources and agriculture at least 90 days before the
275 ocean management plan or any amendments thereto are to take effect.

276
277 (h) The secretary shall reconsider the decision to adopt an ocean management plan, any portion
278 thereof or any amendment thereto only if information which has been overlooked or
279 misapprehended requiring such reconsideration is presented by the planning representative of a
280 local government, any state agency or 10 or more citizens of the commonwealth in a written
281 petition submitted within 21 days of the secretary's decision. The secretary's decision shall be
282 final 21 days after it is issued should there be no requests for reconsideration timely filed. A
283 petition for reconsideration shall include a clear and concise statement of the specific objections
284 to the secretary's decision and the relief sought, including any specific changes that are
285 proposed for consideration. The secretary shall respond in writing to such petition within 21
286 days of the close of the petition period and shall set forth the basis for such response including
287 the reasons for any modification of the decision. Decisions on requests for reconsideration shall
288 be final upon a date specified by the secretary in the response to the request for reconsideration,
289 and in any case, not longer than 21 days after the response. After the secretary's decision

290 becomes final, notice thereof shall be published in the next available edition of the
291 Environmental Monitor and the Massachusetts Register.

292

293 (i) Judicial review of the secretary's approval of an ocean management plan or any amendment
294 thereto shall be as provided in section 7 of chapter 30A. Such action shall be commenced
295 within 30 days of the publication in the Massachusetts Register of notice of the ocean plan or
296 amendment, or, if a request for reconsideration is filed, within 30 days of publication of notice
297 of the secretary's decision on the request for reconsideration. No such action may be
298 commenced unless the issue complained of was raised by that person in writing during the
299 public comment period on the ocean plan or amendment. An issue may be raised for judicial
300 review upon a showing that it is material and that it was not reasonably possible with due
301 diligence to have raised it during the public comment period.

302

303 (j) Notwithstanding any other provisions of this section, the following activities are prohibited
304 between the mean low water mark and the seaward boundary of the commonwealth:

305

306 (1) constructing or operating offshore or floating electric generating stations in areas designated
307 as an ocean sanctuary by section 13 of chapter 132A, except:

308

309 (i) on an emergency and temporary basis for the supply of energy when such electric
310 generating station is otherwise consistent with an ocean management plan; or

311

312 (ii) for small-scale renewable energy systems, as defined by the ocean management plan, in
313 areas other than the Cape Cod ocean sanctuary, established by section 13 of chapter 132A, when
314 the small-scale renewable energy system is otherwise consistent with an ocean management
315 plan;

316

317 (A.) The ocean management plan shall include standards and criteria for siting small scale
318 offshore renewable energy facilities, including but not limited to: compatibility with existing
319 uses, appropriateness of technology and scale, environmental protection, public safety and
320 community benefit.

321

322 (B.) In regions where regional planning agencies are provided regulatory authority, those
323 regional planning agencies may review all small scale offshore renewable energy projects as
324 developments of regional impact based on the standards and criteria as set forth in their regional
325 policy plans. Any person aggrieved by a decision of a regional planning agency relating to an
326 offshore renewable energy project may appeal the decision to the Energy Facilities Siting
327 Board, hereinafter referred to as the board. The board shall conduct an adjudicatory proceeding
328 as defined in chapter 30A of the general laws. The board shall make findings as to whether the
329 offshore renewable energy project complies with the standards and criteria as set forth in the
330 ocean management plan. However, the decision of the regional planning agency shall not be
331 disturbed unless the energy facilities siting board finds on the record that the decision of the
332 regional planning agency was arbitrary or capricious. The board's decision shall be subject to
333 judicial review pursuant to section five of chapter 25 of the general laws.

334 (2) dumping or discharging commercial, municipal, domestic or industrial wastes in areas
335 designated as an ocean sanctuary by section 13 of chapter 132A, except as may be allowed
336 pursuant to sections 16 and 16A to 16F, inclusive, of chapter 132A and their implementing
337 regulations, as may be amended, and except for the discharge of bait and fish offal customarily
338 associated with fishing;

339

340 (3) incinerating solid waste material or refuse on or in vessels moored or afloat;

341

342 (4) extracting stone, sand, gravel or other minerals, gases or oils from the seabed or subsoil;
343 except for dredging for maintenance or other navigational purposes, including but not limited to
344 slips, moorings and maintenance or expansion of boat access, outside of the geographic area
345 described in subsection (b); and except for dredging for maintenance or other navigational
346 purposes within the geographic area described in subsection (b), shore protection, beach
347 restoration or for facilities and activities undertaken or required by a public agency for the
348 purposes of decontamination, response actions, capping or disposal of polluted aquatic
349 sediments, if consistent with any applicable provisions of an ocean management plan;

350

351 (5) building or operating commercial advertising in areas designated as an ocean sanctuary by
352 section 13 of chapter 132A; and

353

354 (6) building or long-term mooring of a structure on the seabed or subsoil in the area designated
355 as the Cape Cod ocean sanctuary by section 13 of chapter 132A, except as allowed in clauses
356 (1) and (4) to (7), inclusive, of subsection (k).

357

358 (k) In all areas within the geographic area described in subsection (b), the following activities
359 are allowed, to the extent not prohibited by subsection (j), provided that such projects have met
360 all applicable requirements of other local, state and federal laws and regulations and are
361 consistent with an applicable ocean management plan:

362

363 (1) beach nourishment, channel and shore protection structures and dredging for maintenance
364 and navigational purposes;

365

366 (2) the operation, maintenance, repair or construction of infrastructure facilities used in the
367 transmission or distribution of electricity, natural gas, water or telecommunications services,
368 including pipelines, cables and conduits, except in the area designated as the Cape Cod ocean
369 sanctuary by section 13 of chapter 132A;

370

371 (3) industrial liquid coolant discharge and intake systems, except in the area designated as the
372 Cape Cod ocean sanctuary by section 13 of chapter 132A;

373

374 (4) facilities for aquaculture;

375

376 (5) moorings, floats and rafts held by bottom anchor for the purpose of vessel docking or
377 mooring, and ramps attached thereto;

378

379 (6) docks, piers, wharves or other filled or pile-supported structures contiguous with the existing
380 land mass;

381

382 (7) environmental restoration or mitigation activities required by certificate of the secretary of
383 energy and environmental affairs;

384

385 (8) dumping or discharging commercial, municipal, domestic or industrial wastes, in areas not
386 designated as an ocean sanctuary by section 13 of chapter 132A; and

387

388 (9) temporary scientific and educational facilities.

389

390 (l)(1) In all areas within the geographic area described in subsection (b), commercial and
391 recreational fishing are allowable, subject to the exclusive jurisdiction of the division of marine
392 fisheries. Any component of an ocean management plan which regulates commercial or
393 recreational fishing shall be developed, promulgated and enforced by the division of marine
394 fisheries pursuant to its authority under chapter 130.

395

396 (2) Any component of an ocean management plan which does not have as its primary purpose
397 the regulation of commercial or recreational fishing but which has an impact on such fishing
398 shall minimize negative economic impacts on commercial and recreational fishing. Prior to
399 inclusion in an ocean management plan, any such component with such a reasonably

400 foreseeable impact shall be referred to the division of marine fisheries, which shall respond to
401 the secretary, pursuant to paragraph (3), in a timely and efficient manner.

402

403 (3) The director of the division of marine fisheries shall evaluate any component referred to
404 him under paragraph (2) for its impact on commercial and recreational fishing and, if possible,
405 develop and recommend to the secretary any suggestions or alternatives to mitigate or eliminate
406 any adverse impacts. The response of the director shall be taken into consideration by the
407 secretary and the ocean management advisory commission in determining whether the
408 component shall be included in the ocean management plan. If the secretary does not include a
409 suggestion or recommended alternative, he shall certify in writing the reasons therefore and
410 append this certification to the ocean management plan. If the division does not make a timely
411 response to the secretary, within 30 days, then that failure to timely respond shall be considered
412 a response by the director that the referred component poses no adverse negative economic
413 impact on commercial and recreational fishing.

414

415 (4) The director of division of marine fisheries, subject to the approval of the marine fisheries
416 advisory commission, shall have sole authority for the opening and closing of areas within the
417 geographic area described in subsection (b) to the taking of any and all types of fish, pursuant to
418 section 17A of chapter 130. Nothing in this section shall limit the authority of the director of
419 the division of marine fisheries under section 17 of chapter 130 or any other provision thereto.

420

421 (m) Projects that have filed a chapter 91 license application and received a determination of
422 completeness from the department of environmental protection or, if the project is subject to

423 review pursuant to section 61 of chapter 30, has received a certificate of adequacy regarding a
424 draft environmental impact report from the secretary, shall be governed by the ocean
425 management plan in effect at the time of filing.

426

427

428 (n)The secretary may promulgate such regulations to implement, administer and enforce this
429 section and may interpret this section and any regulations adopted hereunder consistent with his
430 power to enforce the laws of the commonwealth.

431

432 SECTION 6. Section 12A of chapter 132A of the General Laws, as appearing in the 2004
433 Official Edition, is hereby amended by adding the following sentence:- This section and section
434 12C, section 14, section 15, section 16 and section 18 shall cease to have any effect upon the
435 adoption of an ocean management plan pursuant to section 4C of chapter 21A. Before that time,
436 in the case of any differences among the requirements of section 15 and 16 of chapter 132A and
437 paragraphs (j) and (k) of section 4C of chapter 21A, the provisions of sections 15 and 16 of
438 chapter 132A shall control.

439

440 SECTION 7. Section 12B of said chapter 132A, as so appearing, is hereby amended by striking
441 out, in line 3, the words “‘Act’, the Massachusetts Ocean Sanctuaries Act”.

442

443 SECTION 8. Said Section 12B of said chapter 132A , as so appearing, is further amended by
444 striking out, in lines 13 and 14, the words “environmental management” and inserting in place
445 thereof the following words: - environmental protection.

446

447 SECTION 9. Section 16A of said chapter 132A, as so appearing, is hereby amended, in lines 1
448 and 7 by striking out the words “section fifteen” and inserting in place thereof the following
449 words: - clause (2) of paragraph (j) of section 4C of chapter 21A.

450

451 SECTION 10. Any project that, prior to the date of approval of the first ocean management plan
452 as authorized by section 4C of chapter 21A of the General Laws, has:

453 1) filed a chapter 91 license application and received a written determination of completeness
454 by the department of environmental protection; or 2) if the project is subject to review pursuant
455 to section 61 of chapter 30 of the General Laws, received a certificate of adequacy regarding a
456 final environmental impact report from the secretary; or 3) if the project is subject to jurisdiction
457 of the energy facilities siting board, received both a final decision from the energy facilities
458 siting board and a certificate of adequacy regarding a draft environmental impact report from
459 the secretary, shall not be subject to the requirements of said section 4C of said chapter 21A.
460 Such projects not subject to said section 4C of said chapter 21A must comply with sections 12A
461 to 16F, inclusive, and section 18 of chapter 132A of the General Laws, as they were in effect
462 immediately prior enactment of said section 4C of said chapter 21A.

463

464 SECTION 10. The secretary of energy and environmental affairs shall report annually to the
465 joint committee on environment, natural resources and agriculture identifying management
466 measures established and the progress made in creating an ocean management plan pursuant to
467 section 4C of chapter 21A of the General Laws, until such time as a plan is first adopted.

468

469 SECTION 11. The secretary of energy and environmental affairs shall develop, adopt and
470 implement an ocean management plan within 24 months of the effective date of section 5.
471 Upon adoption, an ocean management plan shall be formally incorporated into the
472 Massachusetts coastal zone management program, as referenced in section 4A of chapter 21A
473 of the General Laws.

474
475 SECTION 12. The secretary, in consultation with the department of environmental protection,
476 the department of conservation and recreation and the division of marine fisheries, shall
477 examine the establishment or renegotiation of fees, licenses, permits, rents, leases and the
478 adjustment or development of other revenue sources for the purposes of funding ocean resource
479 enhancement or restoration. Nothing in this section shall provide for a salt-water fishing license
480 or any similar fees or user permits for salt water fishing. The secretary of energy and
481 environmental affairs shall report the findings of this examination to the general court
482 recommending the establishment of fees, licenses, permits, rents, leases and the adjustment or
483 development of other revenue sources, as authorized by subsection (n) of section 4C of chapter
484 21A of the General Laws, by submitting a report, including any proposed legislation, to the joint
485 committee on environment, natural resources and agriculture and the house and senate
486 committees on ways and means within 1 year of the effective date of section 5.